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Restore Franchising, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

JULIA HALL and JAMES HALL,

Plaintiffs,

-vs-

RESTORE MONTANA, LLC, a Montana
Domestic Limited Liability Company;
RESTORE FRANCHISING, LLC, a
Texas Limited Liability Company; TOD
PIERSON WORK, an individual; ABC
CORPORATIONS 1-10; and DOES 1-10,

Defendants.

CV _____

NOTICE OF REMOVAL

1. Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Restore Franchising, LLC (“Restore Franchising”) files this Notice of Removal of this case from the Montana Eighteenth Judicial District Court, Gallatin County. Removal is based on 28 U.S.C. § 1332(a) diversity of citizenship. As demonstrated below,

removal is timely, there is complete diversity of citizenship, all defendants consent, and the amount in controversy requirement is met.

I. THE STATE COURT ACTION AND PLEADINGS

2. Plaintiffs Julia Hall and James Hall filed the below described state court action against Restore Montana, LLC, Restore Franchising, LLC, and Tod Work in Gallatin County, Montana. The state court action was filed as Cause No. DV-22-387A.

3. The state court action seeks personal injury damages stemming from an alleged injury sustained during cryotherapy at Restore Montana's facility in Bozeman. Julia Hall seeks damages from those injuries. Her husband, James Hall, has brought a claim for loss of consortium related to the same alleged injuries.

4. The state court action is a civil action within the meaning of the Acts of Congress for the removal of cases.

5. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Restore Franchising, LLC in the removed case are attached as

Exhibit A:

- a. First Amended Complaint for Damages; and
- b. Summons – Restore Franchising, LLC.

II. DIVERSITY JURISDICTION EXISTS

6. This Court has diversity jurisdiction under § 1332(a).

A. Complete Diversity Exists

7. Plaintiffs Julia Hall and James Hall are natural persons and citizens of Montana.

8. Defendant Restore Montana, LLC is a limited liability company whose citizenship is determined by the citizenship of its members. None of Restore Montana, LLC's members are citizens of Montana.

9. Defendant Restore Franchising, LLC is a limited liability company whose sole member is Austin Cryo Ventures, LLC. There are currently 62 members of Austin Cryo Ventures, LLC, none of whom are Montana citizens.

10. Tod Work is a natural person and is not a citizen of Montana.

11. Plaintiffs have additionally named various John Doe defendants, who are disregarded for diversity jurisdiction purposes. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.”).

12. Complete diversity exists.

B. Removal is Timely

13. Pursuant to § 1446(b), this Notice of Removal is being filed within thirty days of Restore Franchising, LLC receiving information through an e-mail from counsel for Restore Montana, LLC that the case was removable, so it is timely. *See*

§ 1446(b)(3); *Dietrich v. Boeing Co.*, 14 F.4th 1089, 1094 (9th Cir. 2021) (removal clock doesn't begin until the factual basis for removal is unequivocally clear and certain).

14. A limited liability company's citizenship is determined by the citizenship of its owners and members. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2009). Here, the citizenship of Restore Montana, LLC is not apparent from the face of the pleadings as there are no allegations regarding the citizenship of its members. On May 23, 2022, counsel for Restore Montana, LLC confirmed that none of its members are citizens of Montana.

15. As this removal is filed within 30 days Restore Franchising, LLC's knowledge of the citizenship of Restore Montana, LLC, this removal is timely. *Dietrich*, 14 F.4th at 1095.

C. The Amount In Controversy Requirement Is Present

16. As demonstrated below, the damages sought in this case exceed \$75,000.00, exclusive of interest and costs, so the amount in controversy requirement is met. 28 U.S.C. § 1332(a).

17. The Ninth Circuit has “held that ‘the amount in controversy . . . ‘is determined by the complaint operative at the time of removal and encompasses all relief a court may grant on that complaint if the plaintiff is victorious.’” *Fritsch v.*

Swift Transp. Co. of Ariz., LLC, 899 F.3d 785, 791 (9th Cir. 2018) (quoting *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018)).

18. Restore Franchising, LLC does not concede any of the claimed damages discussed below, and its discussion is solely for the amount in controversy requirement. *See Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability.”).

19. Julia Hall alleges she suffered personal injuries James Hall alleges he suffered a loss of consortium. Both seek punitive damages. Plaintiffs made a demand before suit was served claiming damages far exceeding \$75,000.

20. Plaintiffs’ claims demonstrate the amount in controversy exceeds the jurisdictional minimum of \$75,000.

D. All Defendants Consent to Removal

21. Defendants Restore Montana, LLC and Tod Work consent to removal to federal court.

III. REMOVAL IS APPROPRIATE

22. Based on diversity of citizenship and the amount in controversy, this Court has jurisdiction under 28 U.S.C. § 1332. Removal is proper pursuant to 28 U.S.C. § 1441(a), and, pursuant to §§ 106 and 1446(a), and Local Rule 1.2(c)(1), it is to the district court of the United States for the district and division embracing the place

of the state action. Restore Franchising, LLC is filing its Notice of Removal in the Eighteenth Judicial District Court pursuant to § 1446(d). A copy is attached as **Exhibit B.**

Dated: June 7th, 2022

Respectfully submitted,

/s/ Nicholas J. Pagnotta

Nicholas J. Pagnotta
Alexander T. Tsomaya
Williams Law Firm, P.C.
*Attorneys for Defendant
Restore Franchising, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on June 7th, 2022, I filed the foregoing document with the CM/ECF filing system to be transmitted/served electronically upon all interested parties registered under the Court's CM/ECF system.

/s/ Nicholas J. Pagnotta

Nicholas J. Pagnotta

Alexander Tsomaya

Williams Law Firm, P.C.

Attorneys for Defendant

Restore Franchising, LLC